

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 3**

**STARBUCKS CORPORATION**

**Employer**

**and**

**Cases 03-RC-285929  
03-RC-285986  
03-RC-285989**

**WORKERS UNITED**

**Petitioner**

**DECISION AND DIRECTION OF ELECTIONS**

Starbucks Corporation (“Starbucks” or “Employer”) is a company headquartered in Seattle, Washington that operates a chain of coffee shops with locations throughout the United States and the world. On November 9, 2021,<sup>1</sup> Workers United (“Petitioner” or “Union”) filed a representation petition with the National Labor Relations Board (“Board”) under Section 9(c) of the National Labor Relations Act (“Act”). On November 10, it filed two additional petitions. By those petitions, the Union seeks single-facility elections at three stores in and around Buffalo, New York.<sup>2</sup> The three stores in question are store #7949 located at 1775 Walden Avenue, Cheektowaga, New York (“the Walden & Anderson store”); store #47843 located at 3186 Sheridan Drive, Amherst, New York (“the Sheridan & North Bailey store”); and store #7665 located at 4770 Transit Road, Depew, New York (“the Transit & French store”). Starbucks

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<sup>1</sup> All dates are in 2021 unless specified.

<sup>2</sup> The proposed unit at each store consists of the following employees:

Including: All full-time and regular part-time Baristas and Shift Supervisors.

Excluding: Office clerical employees, guards, professional employees and supervisors as defined in the Act.

The parties disagree as to the supervisory status of Assistant Store Managers. Litigation on this issue has been deferred until after the election because the issue relates to the eligibility or inclusion of a portion of the unit or units involved, which does not significantly impact the size or character of the unit or units.

contends that a multi-facility unit consisting of 19 stores in and around Buffalo is the smallest appropriate unit.

On December 2 and 3, a hearing officer for the Board conducted a hearing by videoconference. During the hearing, the Region took official notice of the record in an earlier pre-election hearing involving the same parties and overlapping facts.<sup>3</sup> The parties also presented their positions and supporting evidence as to the instant proceeding which supplement the pre-existing record. I have duly considered the prior record in addition to all new testimony, evidence, and arguments.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. I find that the hearing officer's rulings are free from prejudicial error and hereby affirm them. I further find that the Employer is engaged in commerce within the meaning of the Act; it will effectuate the purposes of the Act to assert jurisdiction; the Petitioner is a labor organization within the meaning of the Act; and a question affecting commerce exists concerning the representation of certain of Starbucks' employees.

Based on the record and consistent with Board law, I find that the Employer has not sustained its burden of demonstrating that the petitioned-for unit must include the 19 stores it seeks. I shall therefore direct elections for the three petitioned-for units.

Lastly, I find that a prompt mail ballot election is appropriate.

### **Procedural History**

This matter is the second hearing regarding representation petitions filed by the Union for employees working at Starbucks stores in the Buffalo area. The first hearing involved petitions filed on August 30 to represent units at three Starbucks stores. As in this matter, the Union sought single-facility units and the Employer sought a unit consisting of all stores in the Buffalo market. On October 28, I issued a Decision and Direction of Election ("DDE") for single-facility units based on those petitions, finding that Starbucks had failed to sustain its burden of showing that the smallest appropriate unit consisted of employees working at 20 stores in the Buffalo area. Starbucks timely filed a request for review.

On December 7, the Board denied review, stating that the DDE had correctly applied the standard that an employer bears a "heavy burden" in overcoming the single-facility presumption

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<sup>3</sup> See Cases 03-RC-282115; 03-RC-282127; 03-RC-282139.

and “must demonstrate integration so substantial as to negate the separate identity” of the single store units. *Starbucks Corp.*, 2021 WL 5848184, at \*1 (Dec. 7, 2021). In that regard, the Board rejected Starbucks’ suggestion that a community of interest between petitioned-for employees and excluded employees rebuts the single-facility unit presumption. *Id.*

The Board also upheld the Region’s conclusions. It held that Starbucks had failed to overcome the Union’s “specific evidence” of store managers’ involvement in such matters as hiring and firing, resolving daily grievances and routine problems, adjusting schedules, approving time off and overtime, evaluating employees, and imposing discipline. *Id.* (citing *Haag Drug*, 169 NLRB 877, 878 (1968)). It further affirmed the DDE’s conclusion that the level of interchange among the petitioned-for stores supported single-facility units, observing “that although the Employer has demonstrated that a significant percentage of employees work ‘at least one shift’ at another store ‘per year,’ this is not evidence of *regular* interchange sufficient to rebut the single-facility presumption” considering “that the petitioned-for stores ‘borrow’ only a very small percentage of their labor from other stores.” *Id.* (citing *Cargill, Inc.*, 336 NLRB 1114, 1114 (2001)).<sup>4</sup> Finally, the Board agreed that “the remaining factors under the Board’s single-facility test—similarity of employee skills, functions, and working conditions; geographic proximity; and bargaining history—are not sufficient to rebut the single-facility presumption, especially given the lack of centralized control and interchange.”<sup>5</sup>

While Starbucks’ request for review was pending with the Board, the Union filed three additional petitions for representation, which are at issue here. As in the prior proceeding, the Union seeks single-facility units while Starbucks seeks a multi-facility unit encompassing the Buffalo market. The parties supplemented the record from the prior proceeding through additional testimony and evidence, including the operational changes implemented in late August and September. While the conclusions from the prior hearing are not binding here, the Region has taken official notice of the prior record.

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<sup>4</sup> The Board nonetheless disavowed the “suggestion that *Lipman’s*, 227 NLRB 1436, 1438 (1977), stands for the proposition that permanent transfers are not relevant to the Board’s analysis of employee interchange in this context.” *Starbucks Corp.*, 2021 WL 5848184, at \*1 (Dec. 7, 2021).

<sup>5</sup> The Board also rejected Starbucks’ argument that the elections at issue should have been conducted manually rather than by mail-ballot, noting that employees in the petitioned-for units were “scattered” to an extent justifying a mail ballot election under an exception specifically set forth in *San Diego Gas and Electric*, 325 NLRB 1143 (1998).

### **Positions of the Parties**

As in the initial hearing, Starbucks maintains that the smallest appropriate unit must include all stores in the “Buffalo market,” which it defines as the trade area around the city limits, including the suburbs of Amherst, Cheektowaga, and Lancaster. It argues that the Union has cherry-picked stores in that area based on the “extent of organizing,” which is prohibited under Section 9(c)(5) of the Act.

Starbucks further argues that traditional Board analysis compels a multi-facility unit. It emphasizes the company’s detailed and centralized operational protocols, which it contends demonstrate functional integration, eliminate distinctions between stores, and facilitate regular and frequent interchange of employees. It maintains that labor relations are standardized nationally and not controlled by store managers. It notes that employees throughout the market have the same skills and are entitled to the same benefits and wages. Finally, it asserts that the geographic proximity and lack of bargaining history support a multi-facility unit.

Starbucks relies on new evidence and testimony to differentiate the petitions here from those at issue in the prior proceeding. In that regard, it cites *Dattco, Inc.*, 338 NLRB 49 (2002), for the proposition that the conclusions reached by the Region and the Board in the prior matter do not require the same conclusions be reached in this case. To that end, much of Starbucks’ new evidence centers on practices introduced in late-August and early-September. During that timeframe, Starbucks implemented centralized hiring, orientation, and training for employees in the Buffalo market and brought in new district managers who increased their presence at stores relative to their predecessors. While urging that the Region’s and the Board’s decisions regarding the prior petitions were wrongly decided, Starbucks contends that these new facts and related testimony distinguish the three stores at issue here. It emphasizes that it has taken hiring, orientation, and training responsibilities from store managers, drastically reducing local autonomy over such matters. Starbucks further relies on additional evidence and expert testimony regarding interchange to support a market-wide unit.<sup>6</sup>

The Union maintains that single-facility units remain appropriate for the three stores in question. First, it emphasizes the strong single-facility presumption under longstanding Board

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<sup>6</sup> The Union objected to the admission of expert witness testimony analyzing Starbucks’ interchange data. While I have duly considered this evidence and testimony, I afford it only the appropriate weight as explained in detail herein.

precedent. It notes that Section 9(b) of the Act specifies that a plant unit is appropriate and cites cases that have applied this principle over the years, including in the retail context. It argues that Starbucks cannot distinguish itself in this regard. Rather, the Union maintains that centralization takes a backseat to other factors in the context of a retail chain, where a high degree of centralization is to be expected. It emphasizes instead that Starbucks' labor relations are largely conducted on a store-by-store basis with store managers traditionally exercising independent discretion over a host of daily operational matters, including hiring, training, orientation, assignment of work, discipline, termination, promotions, performance evaluations, and resolution of employees' daily grievances and routine problems. It also underscores that interchange is limited and entirely voluntary.

To the extent that Starbucks has recently reduced store managers' autonomy over hiring, orientation, and training, the Union asks that the Region discount these changes because they were made in response to the organizing campaign. It notes that employees, including from the stores at issue here, signed a letter to Starbucks CEO Ken Johnson on August 23 announcing their intent to organize and that the Union filed its first petition for representation for a Buffalo-area store on August 30. It observes that, immediately thereafter, Starbucks began curtailing store managers' discretion by centralizing hiring, orientation, and training while also bringing in new district managers who increased their presence in stores. The Union argues that such changes were a self-serving attempt to reduce store managers' autonomy to increase the likelihood of overcoming the single-facility presumption. It further urges that the changes were unlawful, as they were made in response to the organizing campaign, and that Starbucks should not be permitted to benefit from them.

Lastly, the Union notes that the geographic spread between the stores, differences in their immediate markets, and lack of bargaining history in a multi-facility unit militate in favor of the petitioned-for, single-facility units.

### **Summary of Record Evidence**

Starbucks is a multinational corporation that owns and operates an international chain of coffee shops, including nearly 9,000 stores in the United States. It organizes its retail operations in North America into twelve regions headed by regional vice presidents, including the Northeast Region which encompasses the stores at issue here. The Northeast Region is further divided into

various administrative districts headed by a district manager.<sup>7</sup> A store manager heads each individual store and reports to one of these district managers. Shift supervisors support and cover for store managers. Some locations also employ an assistant store manager.

*Overview of Starbucks Operations in and around Buffalo, New York*

The three stores in question are owned by the Starbucks Corporation and are not separately incorporated. They are located in the suburbs immediately surrounding the city of Buffalo, specifically the town of Cheektowaga, the town of Amherst, and the village of Depew, which extends across the town boundary of Cheektowaga and neighboring Lancaster. These stores range from about 7 miles to about 14 miles apart.

Starbucks seeks to include stores in a broader geographic area in a single unit. Specifically, it asks to include all stores in the “Buffalo market,” which Starbucks’ Vice President of Operations defined as the trade area around the city limits, including proximate suburbs.

Starbucks’ Administrative Districts 159 and 362 encompass, but are not coextensive with, the Buffalo market. While District 362 includes only stores in and around Buffalo, District 159 extends into Rochester, about an hour and fifteen-minute drive from downtown Buffalo. Starbucks does not contend that all stores in District 159 should be included in a multi-facility unit. Rather, it seeks inclusion only of those District 159 stores that fall within the geographic area near Buffalo and exclusion of those that, presumably, Starbucks considers to be within the Rochester market.

Within the Buffalo market, the company operates 19 stores which collectively employ approximately 400 employees.<sup>8</sup> These stores are as far flung as 30 miles apart, although each store is within 15 miles and some are less than 5 miles from at least one other location. Among the stores are one mall-based kiosk and 18 cafes, many of which include drive-thrus. The three stores at issue here are all cafes with drive-thrus.

Starbucks has no bargaining history with any of the stores in the Buffalo market.

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<sup>7</sup> Starbucks routinely redistricts to balance administrative burdens.

<sup>8</sup> The parties generally refer to Starbucks employees as “partners” consistent with Starbucks’ internal nomenclature. I will favor the term “employee” throughout this decision to maintain consistency with the definitions of the Act and the language of Board precedent.

### *Store Operations*

Consistency is a touchstone for Starbucks and is sustained by a host of nationwide policies and procedures. All stores are subject to detailed operational plans which aim to ensure a consistent customer experience across locations, down to such granular details as the placement of food in display cases. Decisions about store design, equipment placement, marketing and promotions, store budgets, hours of operation, and contracts with vendors and contractors are made at the district level or above.

Starbucks' products, procurement, and pricing are also consistent across the stores in question. Accordingly, they share a supply logistics network. A distribution center in Rochester serves the "Buffalo market" as well as a region spanning Western, Central, and Upstate New York. A roasting plant in York, Pennsylvania supplies coffee to stores in the Buffalo market and to Starbucks' entire Northeast Region. Store managers play no role in distribution routes or decisions. However, with some regularity, they ask employees to pick-up out-of-stock supplies from another store, usually the closest in proximity.

To support its operations, Starbucks maintains various technologies to assist with supply orders, scheduling, and consistency in stores' applications of human resources policies. For example, Starbucks has tools for ordering products and supplies. One such system automatically generates orders for all packaged foods, packaged coffee, merchandise, and gift cards, which cannot be adjusted by the store manager. Another program ensures auto-shipment of certain food and beverage items so the store manager "doesn't have to interact with the order." A third system manages inventory by suggesting quantities of products not covered by automatic shipments. Store managers can and do revise these suggested quantities.<sup>9</sup>

Technology also supports employee scheduling. A program called "the Partner Planning tool" uses demand forecasts and information about employee availability to generate store schedules. Employees must indicate their availability to work on a standard form. The Partner Planning tool then generates a proposed schedule based on these availabilities and forecasted demand. Starbucks maintains that store managers merely execute the dictates of this tool.

However, the record reflects different facts on the ground about scheduling. While the Partner Planning tool creates a starting point for schedules, store managers routinely make

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<sup>9</sup> Starbucks maintains that all food and beverage ingredient ordering will be fully automated in the Buffalo market by 2022.

changes based on the circumstances of their stores. Their job descriptions, the company's employee guide, and witness testimony about the stores in question support the conclusion that store managers have authority to make such changes. Employee witnesses testified that store managers edit schedules for discrepancies and to ensure adequate coverage. They further attested that store managers regularly ask employees to work outside of stated availabilities to account for gaps in coverage, last minute time-off requests, and other issues. Contrary to Starbucks' representation that schedules are uniformly set three weeks in advance, an employee at one of the petitioned-for stores testified that he had received significantly less notice of his schedule, as little as a week to a week and a half in advance. The record therefore supports the conclusion that store managers are responsible for developing employees' schedules.<sup>10</sup>

Relatedly, store managers are responsible for approving time-off and overtime requests<sup>11</sup> and for ensuring the accuracy of timekeeping and payroll records. Starbucks contends that employees simply are not aware of upper-level management's involvement in these matters but offered no concrete evidence of that involvement. In contrast, documentary evidence and testimony demonstrate store managers' verbal and electronic approval of time-off requests. Additionally, though employees must generally make time-off requests three weeks in advance through an electronic system, which are then approved by store managers, they often need to make requests with less notice. One employee testified in the instant hearing that he could electronically request time off as little as a week and a half ahead of time because the store manager was frequently delayed in making schedules. Regardless, once the schedules are created, the record demonstrates that employees first attempt to obtain coverage for scheduled shifts within their store, then from other stores via an employee-run group chat, but ultimately can bring requests to their managers, who approve them in real time. Store managers also make

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<sup>10</sup> The record contains some evidence that district managers must validate schedules developed by store managers. There is no evidence that they override schedules that are otherwise in keeping with forecasted demand. Store managers therefore exercise discretion in allocating shifts among employees and accommodating their shifting requests for hours and time-off.

<sup>11</sup> The record includes conflicting evidence as to store managers' authority to approve overtime. Whereas the employee guide states that store managers approve overtime, a district manager testified that this is her prerogative. However, given the absence of specific evidence that district managers directly handle overtime requests or override store managers' recommendations to approve overtime, Starbucks has failed to sustain its burden of showing that store managers lack local autonomy in this area.



hand-written changes to time-keeping records and likewise review payroll records to ensure accuracy.

The evidence further establishes that store managers assign and direct employees' work. Starbucks maintains that its technology – the “Play Builder” tool – allows managers to input information about employees' availability to generate appropriate work assignments, taking all discretion and judgment out of the process. In practice, the record reflects that store managers either do not use this tool or routinely deviate from its suggestions to build their own choreography. Witnesses testified to never having seen anyone use the tool and that they instead observed managers manually drafting assignments by hand. Other witnesses who have been involved in developing assignments stated that they had rarely or never used the tool. In addition to similar testimony from the prior hearing, a shift supervisor who testified in this matter explained that she does not use the tool because it fails to account for employees' varying levels of skill and experience. No evidence exists that anyone has ever been disciplined for failing to use the Play Builder tool, despite routinely handling assignments without referencing it.

Additionally, the record demonstrates that store managers in the Buffalo market have traditionally handled evaluations, discipline, terminations, promotions, and daily grievances—matters which require in-person supervisory presence. The evidence adduced in this hearing was consistent with that of the prior one in many respects. In particular, the evidence does not support the conclusion that district managers are in stores with sufficient regularity to direct employees' work or second-guess managers' decisions in these areas. While a district manager attested to visiting each store two to three times per week,<sup>12</sup> these visits necessarily must be brief given that she oversees 13 stores and cannot possibly visit each for a sufficient amount of time on each occasion to serve as a regular supervisory presence.<sup>13</sup> Moreover, the record reflects that this

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<sup>12</sup> The district manager also meets with store managers via phone or video conference. However, these platforms do not lend themselves to observing employees in the course of their work, and Starbucks does not contend that district managers are able to do so through these mediums.

<sup>13</sup> The district manager for District 362 oversees 13 stores in and around Buffalo while the District Manager for District 159 oversees about 10 stores from around Buffalo to in and around Rochester. Starbucks' partner resource manager testified that district managers are supposed to be in their stores 60 to 70 percent of their time. She gave the example that a district manager who oversees 10 stores would visit a given store once every 10 days. The new district managers' practices therefore deviate from typical expectations in this regard.

district manager has only been in the role for a few months –since immediately after Buffalo-area employees announced the organizing campaign in a signed letter to Starbucks’ CEO on August 23 and filed the first petition for a single-store unit on August 30. Her routine is therefore not necessarily indicative of historic practices. Indeed, the record from the prior proceeding makes clear that her predecessor was present with less frequency than she has been in recent months.<sup>14</sup>

Regardless, store managers are the only management on the frontline who regularly observe employees’ performance. They therefore conduct evaluations and play a key role in promotions. Witnesses testified to meeting in “one-on-ones” with store managers about their job performance and working with store managers toward desired promotions. To the extent upper-level management has been involved behind the scenes, there is no evidence of regular independent investigations into job performance or promotion recommendations. Starbucks’ employee guide corroborates this conclusion, stating that employees must contact store managers about promotions and to receive coaching about performance and evaluations. It also specifically provides that store managers decide whether employees’ work performance puts them in “good standing” such that they may be promoted. The store managers’ job description likewise specifies these roles, indicating that they must monitor and manage staff development. To the extent the new district managers have been visiting stores with greater frequency since the organizing campaign was announced, the new practices do not change the outcome. Visiting stores two or three times per week for a few hours at a time still does not support the conclusion that district managers are present with sufficient frequency to evaluate employees’ performance or readiness for promotions.<sup>15</sup>

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<sup>14</sup> Starbucks argues that the Region should rely upon the changes it made following the Union’s announcement of the organizing campaign and contends that Board authority supports this approach. While I make no judgment as to whether it is appropriate to rely upon Starbucks’ recent changes, I note that the cases Starbucks cites in support of its argument are distinguishable. In both instances, the reorganizations occurred many years prior to the petitions in question. *See Dattco, Inc.*, 338 NLRB at 51 (prior decisions issued about five years earlier); *Frito-Lay, Inc.*, 202 NLRB 1011, 1012-13 (1973) (restructuring and prior single-facility unit decision about four years old).

<sup>15</sup> Similarly, the representation that Starbucks recently changed its procedure for granting promotions does not change the conclusion that stores exercise autonomy over evaluating an employee’s readiness for one. Although Starbucks represents that it has recently centralized the

Store managers likewise observe and issue discipline. In particular, the responsibility of identifying conduct warranting discipline falls to them. This fact is corroborated by testimony from employees who have received coaching and been disciplined by store managers in real time. Starbucks maintains that a technology program called “Virtual Coach” curtails store managers’ independent judgment to ensure that discipline is consistently administered. It is a program that walks store managers through questions to confirm whether observed conduct merits discipline and, if so, the appropriate degree. Starbucks did not provide testimony from anyone who actively used the tool. In contrast, employee witnesses, including shift supervisors, testified to not being aware of the program. Moreover, the tool itself specifies that it “is intended to complement, not replace, your active assessment and judgment.” So too, store managers’ job descriptions delegate disciplinary decisions to them.<sup>16</sup> Starbucks notes that, prior to Virtual Coach being introduced in 2019,<sup>17</sup> somewhere between 5 to 12 percent of corrective actions were overturned following employee appeals. Putting aside that such appeals are a subset of the total disciplines that store managers issue, this data demonstrates that, at a minimum, store managers’ decisions on corrective actions remained in effect 88 to 95 percent of the time. A district manager attested that she must approve disciplines and identify the appropriate level but offered no specific examples in which she independently investigated a disciplinary matter or deviated

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interview process for promotions, the record includes no specific examples of anyone being promoted through this new procedure. In contrast, Union witnesses uniformly attested that they raised their interest in a promotion to store managers and worked with their store managers to ready themselves. Additionally, documentary evidence, including the employee handbook and store managers’ job descriptions, support the conclusion that store managers play a meaningful role in evaluating performance and eligibility for promotions, particularly with respect to assessing an employee’s “good standing” for a promotion. Starbucks offered no evidence of independent investigations or overriding store managers’ decisions as to employees’ “good standing,” even to the extent that other aspects of the process have been centralized.

<sup>16</sup> Although a Starbucks’ witness testified that a store manager could be subject to discipline for failing to use Virtual Coach, there is no specific evidence of this having happened and other documentary evidence and testimony call this representation into question.

<sup>17</sup> Starbucks represented that it does not have more recent data for the timeframe after it introduced the Virtual Coach.

from a store manager's recommendation.<sup>18</sup> As noted previously, district managers are simply not able to be in stores with enough regularity to be the final word on identifying problematic conduct and issuing corresponding disciplinary actions. This remains true even considering the post-organizing campaign changes.

Similarly, termination decisions originate with store managers. They are consistently in the position to observe employee conduct and then fill out and deliver notices of separation. While employee witnesses did not have personal knowledge of what might happen behind the scenes, Starbucks also did not provide specific evidence of upper-level management's frontline involvement.<sup>19</sup> Although district managers may need to approve terminations, the record contains no examples of a district manager identifying an issue that may justify terminating an employee, independently investigating a situation, or overriding a termination recommendation. The record from this and the prior hearing therefore supports the conclusion that store managers' recommendations are effectively and regularly followed. This conclusion remains true even with new testimony about district managers' increased presence in stores since the start of the organizing campaign.

Store managers are also responsible for handling most daily grievances and routine problems notwithstanding that Starbucks has systems in place through which employees may seek input from outside the store. Starbucks has a human resources hotline which employees may call to raise complaints, concerns, and questions. It maintains that those answering the calls adhere to scripts and triage protocols by, for example, sending harassment and ethics inquiries to a Business and Ethics Compliance team or human resources concerns to the Partner Relations team. However, employees uniformly testified that they approach store managers with grievances and problems. For example, a shift supervisor who testified in the instant hearing

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<sup>18</sup> This representation is also in tension with Starbucks' representation that store managers are responsible for using the Virtual Coach to identify the level of discipline as well as testimony from the prior hearing that a district manager might become aware of a discipline by, for example, reviewing store files at a later date.

<sup>19</sup> Starbucks argues that the Region maintains a double standard by criticizing it for not bringing forward certain kinds of evidence while dismissing the fact that the Union's witnesses admitted to having no personal knowledge of certain matters that may occur behind the scenes. However, the Region's reasoning is wholly consistent with the burden of the proof. Starbucks bears the burden of establishing that a multi-facility unit is the smallest appropriate unit and must adduce specific evidence to do so. The burden is not on the Union to prove the contrary.

attested to bringing a concern to a store manager about an employee who was consistently late, noting that the store manager thereafter had a conversation with the employee about the issue. Such testimony is consistent with documentary evidence, including the employee guide and store managers' job description, which set forth store managers as the point-people for resolving concerns, complaints, and conflicts. The record therefore supports the conclusion that store managers adjust grievances and attend to routine problems.<sup>20</sup>

Accordingly, in contrast to Starbucks' representation that technology solutions and district management dictate such matters as scheduling, assignment of work, promotions, performance evaluations, discipline, terminations, and resolution of grievances, the record establishes a different dynamic. It demonstrates that store managers and employees rarely refer to technology tools for scheduling, assignment of work, and routine concerns. It further supports the conclusion that district managers do not originate or override decisions in these areas because they are not present with sufficient frequency. Rather, they supervise and support store managers by auditing books, reviewing personnel files, setting procedures and expectations, and giving final approval to store managers' decisions around discipline, performance, assessment of "good standing" for promotions, and other store-level matters which require the exercise of discretion by someone present. Inversely, the record makes clear that store managers play a meaningful and consistent role in handling issues which require an in-person presence to observe and judge the circumstances, and that district managers have not meaningfully usurped these functions since the start of the organizing campaign.

Store managers traditionally have also exercised significant autonomy in hiring, training, and orientation. The record from the original proceeding demonstrated that store managers were responsible for these matters. In the instant proceeding, Starbucks introduced evidence that it has

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<sup>20</sup> The conclusion that ordinary grievances and routine problems are handled internally within each store stands despite new evidence that the company displays "Make the Right Call" posters that provide the district managers' contact information and testimony that the current district manager has received phone calls from employees asking to grab coffee, get to know each other, or discuss an emergency at the store. Because the district manager has only been in the role a few months and because the evidence supports the conclusion that the posters have only been displayed since the announcement of the campaign, it is difficult to ascertain a pattern or general practice about the role of district managers in resolving ordinary grievances and problems. Regardless, the weight of the evidence establishes that employees have in the past and continue to approach store managers about most ordinary grievances and problems rather than calling their district manager.

recently curtailed this authority. Specifically, since “late August, early September,” Starbucks has employed a dedicated recruiter for the Buffalo market who has assumed control of recruiting, interviewing, and hiring decisions.<sup>21</sup> It has also centralized orientation and training by establishing a dedicated store for those purposes. Consequently, store managers have played little if any role in these matters in recent months.

Specifically, prior to the organizing effort, store managers were directly involved in hiring and exercised considerable discretion in that regard. While certain hiring functions took place centrally, the record establishes that store managers have handled interviews and evaluated candidates’ merits. A candidate begins the application process, first, by applying through a centralized database, where the application is tracked and stored. A centralized human resources office prescreens candidates. Later, the central office also conducts a background check after a candidate receives a conditional offer and issues a standardized offer letter when the candidate is cleared. The record contains no evidence that these centralized gatekeeping functions are anything but ministerial.

In contrast, the substance of the hiring process has traditionally occurred at the store level. Candidates have generally applied to a posting for a specific store. That store’s manager then conducted interviews with the goal of hiring for that “home store,” where the candidate would work regularly scheduled shifts. Ostensibly, a second manager from another store was supposed to be present for an interview but the record contains no specific evidence that this policy was enforced and includes significant testimony that it was not.<sup>22</sup> Witnesses testified that

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<sup>21</sup> The recruiter began working hourly for Starbucks in May to accommodate staffing issues arising from the COVID-19 pandemic. At that time, she provided services only to Buffalo-area stores with staffing needs and supported about 400 other stores throughout District 8. Since the organizing campaign was announced, she has been assigned the full-time role of recruiting, interviewing, and hiring for Buffalo-area stores exclusively. Starbucks also hired or transferred four additional recruiters to support this new function between September and November. Whereas the recruiter conducted 25 interviews for Buffalo-area stores in the four months prior to September, she and her team conducted 449 interviews in the three months since. On September 13, Starbucks sent an internal email to Buffalo-area district managers directing that “Store managers are no longer to be interviewing or hiring.” The next day, the documentary evidence shows that Starbucks shifted its recruiting model from one that identified candidates for individual stores to one that recruited only for the market.

<sup>22</sup> Starbucks maintains that it regularly conducts market-wide hiring fairs, but witnesses testified that such events are rare.

they have been hired following interviews with only one store manager who extended an offer on the spot. While store managers have standard questions to ask, no evidence exists that they were circumscribed in evaluating candidates based on their unique answers. Indeed, the record includes no evidence that a store manager's recommendation to hire has ever been overridden on the merits of an interview. Rather, the company's interview guide and job descriptions indicate that store managers had authority to exercise independent judgment about hiring.<sup>23</sup>

As to orientation and training, it is undisputed that Starbucks recently centralized these functions, including by setting up a dedicated training store in the Buffalo area. Prior to these recent changes, store managers conducted orientations and trainings. The company developed standardized new hire orientation procedures and training plans, including detailed protocols for the "First Sip" orientation, to guide store managers and barista trainers. However, store managers alone have had authority to sign-off on a new employee's successful completion of orientation and training requirements. Accordingly, the record reflects that store managers traditionally had authority to assess a new hire's progress and understanding based on standard guidelines. There was no evidence that anyone outside an individual store were involved in implementing or evaluating orientation and training. In recent months, however, Starbucks has divested store managers of these responsibilities and centralized these procedures.

#### *Employee Skills, Functions, and Working Conditions*

Little dispute exists that skills, wages, and benefits are generally the same among Starbucks employees. Baristas and shift supervisors across stores sell and prepare identical products, requiring a common skillset. Their wages and benefits are likewise the same. For example, the starting wage for a barista in the Buffalo market was \$15.97 as of October 3. All employees are paid weekly via direct deposit or check on Fridays and receive wage increases at the same time annually. Starbucks determines uniform increases for those with less and greater than three years' experience. Employees' benefits are also the same nationally. They receive the same vacation, time-off, and family leave benefits; health, dental, vision, life, and disability insurances; stock grants; investment and 401(k) plans; COVID-19 benefits; and free coffee and food while working.

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<sup>23</sup> Similarly, employees seeking to change their "home store" have traditionally reached out to the manager of the store to which they wish to transfer.

Employees are also subject to the same national personnel policies and operating procedures. These procedures govern a range of functions, including opening the store, clocking in and out, stocking and displaying merchandise, placing and closing transactions, and preparing food and drinks.

However, functions and working conditions vary between stores in other respects. For example, the record shows that stores differ in their setups, services, and operating hours. The Buffalo market includes cafés with drive-thrus, stores that are café-only, and a mall kiosk. Kiosk, café and drive-thru, and café-only locations necessitate different lay-outs, sets of responsibilities, equipment, and operational considerations.

Likewise, the three stores in question – as with the stores throughout the Buffalo market – have different operating hours based on the needs of their respective locations. Starbucks sets these hours, and store managers generally lack authority to change them, except for weather-related exigencies. Employees for each location therefore have different shifts.

#### *Employee Interchange*

Employees in the Buffalo market are assigned to a “home store,” where, prior to the organizing campaign, they were interviewed, oriented, and trained. Although Starbucks has changed these practices in recent months, the record is clear that employees still work nearly all shifts at their “home store.” Still, as in the past, they can and do work shifts at other stores. The record evidence demonstrates that this interchange is nearly always voluntary or related to such extenuating circumstances as new store openings or temporary store closures.

Starbucks places significant emphasis on its “culture” of interchange. It maintains that it expects employees to work for other locations whenever necessary, noting that the form employees fill out to indicate their availability to work states: “[y]ou could also be asked to work at another location to meet the needs of the business or to attain your requested hours.” Starbucks’ witnesses testified that the culture is such that employees would not decline to work at another location if asked and could not provide an example of employees being disciplined for declining to work elsewhere. It notes that employees share an informal group chat within the Buffalo market that the employees created primarily to obtain coverage for their shifts. Starbucks’ witnesses further testified to transferring employees to other locations to staff new store openings or to provide hours to employees whose stores are undergoing renovations.



In contrast, the Union's witnesses uniformly testified to rarely working elsewhere, only working elsewhere when they want to do so, and to regularly or always declining shifts at other locations without consequence. The Union therefore emphasizes that taking shifts outside a home store is always voluntary. Witnesses from each store noted that a significant percentage of employees do not have cars, making it difficult for them to work elsewhere and nearly impossible to work at more far-flung locations. Whenever they need coverage for a shift, witnesses testified to first asking colleagues at their home store, perhaps checking with the employee-run group chat if that failed, and then approaching the store manager as a next step. They noted that, during store closures, they were given the option of taking vacation time or unpaid leave rather than working elsewhere.

In the instant proceeding, Starbucks provided updated data from September 5, 2019 to November 7, 2021 about employees working shifts other than at their home stores.<sup>24</sup> It also offered the expert testimony of a statistician to analyze and interpret the interchange data. While this data and testimony provide detail about the nature of interchange at the petitioned-for stores and throughout the Buffalo market, it has significant limitations. First, none of the data controls for the important variable of voluntary interchange. Second, while Starbucks presented datasets that control for such variables as interchange resulting from COVID-19-related closures, the impact of permanent transfers, and the impact of opening and closing stores, it controls for these variables individually rather than cumulatively. Therefore, none of the data is unencumbered by extenuating circumstances. Third and critically, the complexity of the analysis obscures the simplicity of the question. While the question is the homogeneity of the petitioned-for stores, the analysis largely focuses on market-wide interchange and individual instances of interchange by employees in the petitioned-for stores across a nearly two-year span.

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<sup>24</sup> Starbucks cites certain public statements made by the Union on Twitter and to the press acknowledging commonalities among employees throughout Buffalo and the existence of regular interchange. I do not rely on these public statements as dispositive of interchange or any other issue. Better evidence exists to quantify the degree and characteristics of employee interchange, including data and testimony.

For example, Starbucks relies on the following conclusions and statistics from its datasets:

- A widespread pattern of geographic borrowing occurs across all stores in the Buffalo Market such that all stores borrow and lend employees throughout the area.
- Throughout the market, employees who work in only one store are in the minority throughout the timeframe.
- Throughout the Buffalo market, approximately 50 percent of employees worked in more than one store and 30 percent worked in three or more stores between September 30, 2019 and November 7, 2021.
- COVID-19 circumstances, store openings and closings, and temporary transfers preceding a permanent one did not produce different levels of interchange than exist under typical circumstances.

As to data pertaining to the petitioned-for stores, Starbucks highlights the following:

- For the Walden & Anderson store between September 30, 2019 and November 7, 2021, about 50 percent of employees worked in 2 or more stores, 41 percent worked in 3 or more stores, and 34 percent worked in 4 or more stores. Meanwhile, 50 percent worked only at the Walden & Anderson store.
- For the Transit & French store between September 30, 2019 and November 7, 2021, 78 percent of employees worked in 2 or more stores, 59 percent of employees worked in 3 or more stores, and 42 percent of employees worked in 4 or more stores. Meanwhile, 22 percent worked only at the Transit & French store.
- For the Sheridan & Bailey store between September 30, 2019 and November 7, 2021, 81 percent of employees worked in two or more stores, 62 percent worked in 3 or more stores, and almost 50 percent worked in 4 or more stores. Meanwhile, 19 percent worked only at the Sheridan & Bailey store.
- Of all employees who have worked at the three petitioned-for stores over the nearly two-year period, 61 percent of those who worked a shift at the Transit & French store, 33 percent of those who worked a shift at the Walden & Anderson store, and 67 percent of those who worked a shift at the Sheridan & Bailey store were assigned to a different home store.
- Almost one in three days at the three petitioned-for stores required an employee borrowed from another store.

In contrast to Starbucks' focus on market-wide trends and ad hoc shifts worked by employees at stores other than their home stores, the Union highlights data that reflects the

consistency of staffing at each of the petitioned-for stores. Specifically, during Fiscal Year (“FY”) 2021,<sup>25</sup> 8 out of 66 employees (12.1 percent) at the Walden & Anderson store, 20 out of 68 employees (29.4 percent) at the Sheridan & Bailey store, and 25 out of 59 employees (42.4 percent) at the Transit & French store worked shifts elsewhere, all on a voluntary and generally ad hoc basis. The Union argues that these statistics are in line with levels of interchange that the Board has found to be insufficient to overcome the single-facility presumption.

The Union further highlights the consistency of staffing at each of the petitioned-for stores by “home store” employees. Specifically, Starbucks’ data shows:

- At the Transit & French store in FY 2021, employees from other stores worked 2.6 percent of the shifts or 2.1 percent of hours scheduled.
- At the Walden & Anderson store in FY 2021, employees from other stores worked 1.3 percent of the shifts or 1.1 percent of the scheduled hours.
- At the Sheridan & Bailey store in FY 2021, employees from other stores worked 4.5 percent of the shifts or 3.7 percent of the scheduled hours.

The Union urges that, while the data shows that employees sometimes work at stores other than their home store, over 95% of hours at each petitioned-for store were worked by employees dedicated to that store over the period in question. Moreover, throughout this timeframe, there was little turnover at the three petitioned-for stores, such that the same core groups worked continuously together at each store.

### **Analysis and Decision**

#### *Applicable Standard and Analytical Framework*

The Board has long held that a petitioned-for single-facility unit is presumptively appropriate unless it has been so effectively merged or is so functionally integrated with other facilities that it has lost its separate identity. *Dixie Belle Mills, Inc.*, 139 NLRB 629, 631 (1962). The party contesting a single-facility unit bears a “heavy burden of overcoming the presumption.” *Sutter West Bay Hosps.*, 357 NLRB 197, 200 (2011).

To determine whether the single-facility presumption has been rebutted, the Board examines: (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) the

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<sup>25</sup> The data for FY 2021 encompasses 51 weeks, from September 28, 2020 to September 19, 2021.

degree of employee interchange; (4) the distance between locations; and (5) bargaining history, if any exists. *See, e.g., Trane*, 339 NLRB 866, 867 (2003); *J & L Plate, Inc.*, 310 NLRB 429, 429 (1993). These same factors apply in the retail chain setting. *See, e.g., Foodland Of Ravenswood*, 323 NLRB 665, 666 (1997); *Red Lobster*, 300 NLRB 908, 912 (1990).

Nearly sixty years ago, in *Sav-On Drugs*, the Board abandoned its prior general policy in the retail chain context of making unit determinations coextensive with the employer's administrative division or the involved geographic area. 138 NLRB 1032 (1962); *accord Frisch's Big Boy Ill-Mar, Inc.*, 147 NLRB 551 (1964). The Board decided that it would "apply to retail chain operations the same unit policy that it applies to multi-plant enterprises in general, that is . . . in the light of all the relevant circumstances of the particular case." *Frisch's Big Boy*, 147 NLRB at 551-52.

The Board expanded upon this policy in *Haag Drug*, stating, "Our experience has led us to conclude that a single store in a retail chain, like single locations in multilocation enterprises in other industries, is *presumptively* an appropriate unit for bargaining." 169 NLRB 877 (1968) (emphasis in original). It elaborated:

Absent a bargaining history in a more comprehensive unit or functional integration of a sufficient degree to obliterate separate identity, the employees' "fullest freedom" is maximized, we believe, by treating the employees in a single store . . . as normally constituting an appropriate unit for collective bargaining purposes.

*Id.* at 877.

However, as in other contexts, the single-facility presumption is rebuttable. The Board explained:

...(W)here an individual store lacks meaningful identity as a self-contained economic unit, or the actual day-to-day supervision is done solely by central office officials, or where there is substantial employee interchange destructive of homogeneity, these circumstances militate against the appropriateness of a single-store unit.

*Id.* at 879.

Here, Starbucks has failed to carry its burden that any unit must consist, at a minimum, of the 19 stores in the Buffalo market. In so finding, I note first that the unit sought by a petitioner is always a relevant consideration. *Lundy Packing Co.*, 314 NLRB 1042, 1043 (1994). "Although other combinations of employees here may also constitute an appropriate unit," the issue is only whether the employees at each petitioned-for store "alone constitute *an* appropriate unit."

*Foodland of Ravenswood*, 323 NLRB at 666. “There is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the most appropriate unit; the Act only requires that the unit be ‘appropriate.’” *Id.* (quoting *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950)); *see also Haag Drug*, 169 NLRB at 877 (“It is elementary that more than one unit may be appropriate among the employees of a particular enterprise.”).<sup>26</sup> The record in this case supports the conclusion that the units requested are individually appropriate.

### *Centralization of Operations*

Certainly, Starbucks operates a highly centralized retail chain operation. Company leadership takes great pride in executing a standardized experience across its locations. Starbucks relies heavily on its centralized operating procedures, including distribution channels, store design, and product offerings, placement, marketing, and promotions, as evidence of functional integration.

However, the Board has long recognized that it “is common in retail chain operations, and particularly in food chains, [for there to be] a considerable degree of centralized administration in the functioning of ... stores.” *Angeli’s Super Valu*, 197 NLRB 85, 85 (1972). It has noted that, “though chainwide uniformity may be advantageous to the employer administratively, it is not a sufficient reason in itself for denying the right of a separate, homogeneous group of employees, possessing a clear community of interest, to express their wishes concerning collective representation.” *Haag Drug*, 169 NLRB at 878. Therefore, while this evidence of centralized operations is noted, such a circumstance is not considered a primary factor in the consideration of single-store units in this industry. *Id.*

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<sup>26</sup> This point is relevant to Starbucks’ characterization of the Union’s public efforts to organize the entire Buffalo market as a tacit admission that the only appropriate unit encompasses the full area. It may well be true that the entire market is an appropriate unit, but this does not compel a finding that single store units are inappropriate. Contrary to Starbucks’ contention, Section 9(c)(5) of the Act does not prohibit the Union’s apparent approach of first organizing individual stores in the Buffalo area. The cases Starbucks cite are distinguishable. All involve situations in which a union attempted to exclude from its bargaining unit certain employees within a single facility, not employees of separate facilities. *See NLRB v. Metro. Life Ins. Co.*, 380 U.S. 438, 442 (1965); *Lundy Packing Co.*, 68 F.3d 1577, 1580-83 (4th Cir. 1995); *May Dept. Stores Co. v. NLRB*, 454 F.2d 148, 150-51 (9th Cir. 1972). The Board examines multiple factors for assessing the appropriateness of a single-facility unit for a multi-facility employer. *See, e.g., Trane*, 339 NLRB at 867; *J & L Plate, Inc.*, 310 NLRB at 429. The remaining analysis of this section addresses that question and Starbucks’ Section 9(c)(5) concern.

I find that, in this case, the stores' standardization is outweighed by other evidence of local autonomy in operations and labor relations.

*Central Control Over Daily Operations and Labor Relations, Including the Extent of Local Autonomy*

The Board considers evidence of local autonomy in daily operations and labor relations to be a key consideration in assessing the appropriateness of single-store units in retail chain operations. For example, in *Haag Drug*, the Board found that one of 11 restaurants operated by an employer in a geographic area was an appropriate unit despite a "high degree of centralized administration," including central profit-and-loss records, payroll functions, and chainwide handling of purchasing, vendor payments, and merchandising which bore "no direct relation to the employees' day-to-day work and employee interests in the conditions of their employment." 169 NLRB at 877-79. The Board explained:

More significant is whether or not the employees perform their day-to-day work under the immediate supervision of a local store manager who is involved in rating employee performance, or in performing a significant portion of the hiring and firing of the employees, and is personally involved with the daily matters which make up their grievances and routine problems. It is in this framework that the community of interest of the employees in a single store takes on significance, for the handling of the day-to-day problems has relevance for all the employees in the store, but not necessarily for employees of the other stores.

*Id.* at 878.

The evidence in this case demonstrates that store managers exercise discretion over many daily operational and labor relations matters. They make schedules, secure coverage outside of employees' stated availabilities when drafting schedules, and make work assignments based on their independent judgment of employees' preferences, strengths, and skills. They observe employees' performance, evaluate them, play a central role in promotions, and mediate daily grievances and routine problems. While employee disciplines are occasionally overturned on appeal, store managers' decisions generally prevail without external input. The record reflects that district managers do not routinely conduct independent investigations of disciplines, evaluations, or grievances.<sup>27</sup> Even relying on the new district managers' increased presence since

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<sup>27</sup> *Red Lobster*, 300 NLRB at 911 (noting importance of independent investigation by upper-level management on matters such as discharges).

the organizing campaign began, they simply cannot be present in any individual store with enough frequency to serve as supervisory eyes and ears.<sup>28</sup>

The record reflects that, since the prior decision, Starbucks has centralized hiring, training, and orientation functions previously under the purview of store managers. Witnesses consistently testified that, prior to the campaign, store managers were responsible for each of these functions. Store managers interviewed job applicants and effectively recommended them for hire, conducted orientations, and oversaw new employees' trainings. Even relying on recent changes which eliminated store managers' role in these areas, the conclusion remains that each store operates with sufficient local autonomy to support its own unit. Store managers handle daily matters ranging from adjusting schedules, approving time-off, assigning work, rating employee performance, identifying the need for discipline, recommending terminations, and handling employees' grievances and routine problems. Under these circumstances, "the actual day-to-day supervision" is not "conducted by central office officials" such that a single-facility unit is inappropriate. *Haag Drug*, 169 NLRB at 879.

Accordingly, I find that Starbucks' store managers are vested with significant autonomy in handling a range of operational and labor relations matters,<sup>29</sup> notwithstanding the existence of

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<sup>28</sup> *Red Lobster*, 300 NLRB at 908, fn.4 (finding local autonomy in case where upper level supervisors were present in stores for a full day about once each week and possibly also on store managers' days off in part because "there is insufficient staffing for persons in these two positions to be present in all restaurants at all times"); *Renzetti's Mkt., Inc.*, 238 NLRB 174, 175-76 (1978) (emphasizing that daily supervisor is "better able to comment on the job performance of employees over whom he has constant supervision").

<sup>29</sup> *Cargill, Inc.*, 336 NLRB at 1114 (finding local autonomy when supervisors make assignments, supervise work, schedule maintenance inspections, impose discipline, handle initial employee complaints, and schedule vacations); *Foodland of Ravenswood*, 323 NLRB at 667 ("[R]esponsibility . . . to hire part-time employees, to schedule and assign employees, to approve overtime, to grant time off, to impose and recommend discipline, to evaluate employees and recommend their promotion, and to resolve and handle formal and informal employee grievances, constitutes significant evidence of local authority over employees' status such that centralized control over other matters does not overcome the appropriateness of a single-store unit."); *Eschenbach-Boysa Co.*, 268 NLRB 550, 551 (1984) (finding local autonomy where stores managers conduct interviews, hire employees, grant time off, and resolve employee problems and complaints even though upper-level manager "reserves for himself many management prerogatives [because] he necessarily must leave many of the day-to-day decisions . . . to his managers"); *Renzetti's Mkt.*, 238 NLRB at 174 (finding merit to petitioner's contention that such factors as centralized administrative control, uniform fringe benefits, and

centralized policies and procedures, including Starbucks' recent enhanced centralization of hiring, training, and orientation functions.<sup>30</sup>

*Employee Skills, Functions, and Working Conditions*

No meaningful dispute exists that employees' wages and benefits are uniform throughout the Buffalo market and established by corporate leadership. However, "[w]hile employee benefits have been centrally established, and the uniformity thereof is of some significance, no greater control or uniformity has been shown here than is characteristic of retail chain store operations generally." *Haag Drug*, 169 NLRB at 879.

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interdependence of the stores' operations were outweighed by the "factor which is of chief concern to the employees," the day-to-day working conditions, including discipline, scheduling, requests for leave, and handling routine grievances); *Bud's Thrift-T-Wise*, 236 NLRB 1203, 1204 (1978) (finding that, though central labor policies circumscribed authority, store managers exercised autonomy in interviewing, scheduling, granting time-off, adjusting grievances, evaluating employees, and making effective recommendations for hiring, discipline, and firing); *Lipman's*, 227 NLRB at 1437 ("With regard to local autonomy, we find that supervisory personnel at the store level exercise considerable authority in personnel matters. While the personnel director makes final decisions as to discipline, schedules vacations, arranges for transfers, and handles grievances brought to her, in our opinion, the store manager and the personnel clerical at the downtown store also have and exercise substantial authority in the personnel area, in that the store manager evaluates and reprimands employees and the personnel clerical interviews, hires, schedules employee shifts, vacations, and overtime, and adjusts grievances."); *Haag Drug*, 169 NLRB at 879-80 (1968) (stating that store managers are generally autonomous in rating employee performance, hiring and firing, and handling routine grievances); cf. *Big Y Foods, Inc.*, 238 NLRB 860, 861 (1978) (upper-level managers on location multiple times per week "and may remain at a particular market the entire day," independently resolved employee grievances, evaluated employee performance, and were responsible for interviewing and selecting prospective employees).

<sup>30</sup> I have duly considered the cases Starbucks relies upon as support that this factor weighs in favor of a multi-facility unit. These cases are distinguishable. See, e.g., *Kansas City Coors*, 271 NLRB 1388, 1389-90 (1984) (hearing occurred immediately prior to consolidation into a single facility where employees would regularly work side-by-side); *Super X Drugs of Ill.*, 233 NLRB 1114, 1115 (1977) (district manager set hours employees are to work and allocated those hours among employees (ie, set schedules) and was directly involved in routine grievances and problems); *Kirlin's Inc. of Cent. Ill.*, 227 NLRB 1220 (1977) (upper-level management handled scheduling); *Malco Theatres, Inc.*, 222 NLRB 81, 82 (1976) (greater degree of interchange and presence of district management on location as frequently as four times per week); *Quality Food Mkts.*, 126 NLRB 349, 350 (1960) (greater interchange and predating presumption that single-store unit is appropriate in retail context).



Likewise, employees' skill sets are largely the same. However, these facts are largely true of all Starbucks' stores, and not just the Buffalo market. Moreover, meaningful differences exist in job functions across the petitioned-for stores (and between stores throughout the market) that support the appropriateness of single-facility units. Stores throughout the market operate with different lay-outs, including café-only configurations, cafés with drive thrus, and a kiosk. These differences yield varying layouts, equipment and staffing needs, and job responsibilities.<sup>31</sup> The stores also operate in different contexts, serving downtown customers, various suburban areas, a mall, and an airport. The differing hours of operation for the three stores and stores throughout the market demonstrate that the characteristics of each location matter to the working conditions of their staff.<sup>32</sup>

I find, therefore, that differences in job functions and working conditions exist at each location, outweighing standardized wages, benefits, and skills that are to be expected in a large retail chain.

#### *Employee Interchange*

The record is replete with data on employee interchange. Starbucks emphasizes that its data shows significant interchange throughout the Buffalo market, facilitated by a culture that “expects” employees to work anywhere and an informal group chat among employees to swap shifts. However, the data, as previously discussed, has serious limitations. In particular, it does not cumulatively control for such extenuating circumstances as the COVID-19 pandemic's impact on interchange, the impact of permanent transfers, and the impact of opening and closing

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<sup>31</sup> See *Lipman's*, 227 NLRB at fn.7 (noting that two nearby stores had their own “identity as a distinct economic unit by virtue of the fact that one is known as the downtown store and the other is located in a shopping mall”); *Hot Shoppes, Inc.*, 130 NLRB 138, 141 (1961) (finding operations “functionally distinct” where some workers catered at airport and others served in normal restaurants).

<sup>32</sup> The cases that Starbucks relies on to the contrary are distinguishable. *Budget Rent A Car Systems, Inc.*, 337 NLRB 884, 885 (2002) (all locations had same “corporatewide hours” if they rented trucks and cars and if they rented only cars with no evidence that this difference in service offerings impacted each facility's equipment and staffing needs, employees' job responsibilities, or customer base); *Queen City Distributing Co.*, 272 NLRB 621, 622 (1984) (merchandise “substantially similar” in addition to finding of little local autonomy over hiring, firing, and other labor relations matters except for “routine daily matters”).

stores.<sup>33</sup> More significantly, the record establishes that interchange is nearly always voluntary. Employees may chat about swapping shifts amongst themselves and store managers may even seek coverage from other stores, but witnesses testified that they routinely decline requests to work elsewhere without repercussion. Even when stores are closed temporarily, the testimony supports the conclusion that employees have the option to take unpaid or vacation leave rather than temporarily transfer to another location. The Board has noted that voluntary interchange should be afforded less weight in rebutting the single-facility presumption.<sup>34</sup> Similarly, aside from a voluntary, informal group chat, there is little evidence of regular contact between employees of different stores. Starbucks notes that employees regularly pick up out-of-stock supplies from nearby locations, but this point speaks more to the standardization of the Starbucks enterprise than to any loss of homogeneity of individual stores.<sup>35</sup>

Moreover, it is appropriate to give special consideration to interchange impacting the three petitioned-for stores, since it is their homogeneity that is the central question in assessing whether they each constitute appropriate units. The data reflect that each minimally borrowed other stores' employees. They were staffed at least 95 percent of the time by home-store employees, and most home-store employees worked continuously at each store, throughout the period analyzed. Starbucks' dataset corroborates this analysis. For the Transit & French store, it shows that employees from other stores worked only 2.6 percent of the shifts or 2.1 percent of hours in FY 2021. Similarly, for the Walden & Anderson store, it shows that employees from

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<sup>33</sup> See, e.g., *Hilander Foods*, 348 NLRB 1200, 1203 (2006) (“[T]he Board traditionally has not accorded significant weight to staffing new stores temporarily by transferring employees who ultimately return to their permanent store assignments, or to transfers from an existing location to a new facility.”) (citations omitted); *Point Pleasant Foodland*, 269 NLRB 353, 354 (1984) (“[I]nterchange has almost exclusively involved the opening of new stores and promotions, and thus is not entitled to much weight in determining the scope of the unit”) (citing *Renzetti's Market*, 238 NLRB at 175 fn.8 (1978)).

<sup>34</sup> *New Britain Transp. Co.*, 330 NLRB 397, 398 (1999) (“[V]oluntary interchange is given less weight in determining if employees from different locations share a common identity.”); *Red Lobster*, 300 NLRB at 911 (noting that “the significance of that interchange is diminished because the interchange occurs largely as a matter of employee convenience, i.e., it is voluntary”) (emphasis added).

<sup>35</sup> *Eschenbach-Boysa Co.*, 268 NLRB at 551 (finding single store units appropriate notwithstanding that “[o]nce or twice a week, uniforms, small equipment, or food is transferred between the two restaurants to relieve temporary shortages”).

other area stores worked 1.3 percent of the shifts or 1.1 percent of the scheduled hours in FY 2021. Lastly, for the Sheridan & Bailey store, employees from other stores worked only 4.5 percent of the shifts or 3.7 percent of the hours. All shifts worked elsewhere were largely voluntary.

Additionally, the data reflects that 42.4 percent of Transit & French, 12.1 percent of Walden & Anderson, and 29.4 percent of Sheridan & Bailey employees worked shifts at other stores.<sup>36</sup> These numbers are in line with what the Board has found to be insufficient to rebut the single-facility presumption.<sup>37</sup> These numbers, moreover, also reflect voluntary interchange.

Finally, I note that for the three petitioned-for stores, the same group of employees worked together regularly and consistently with minimal turnover during the period covered by the record data. This dynamic supports a conclusion that each store constitutes a “homogeneous group of employees” which has not been destroyed by the level of interchange.

I find, therefore, that the interchange factor supports the petitioned-for single-facility units.<sup>38</sup>

#### *Distance Between Locations*

The stores in the Buffalo market are not so proximate as to weigh strongly in favor of a larger 19-store unit. They are up to 30 miles apart, although each store is within 15 miles and

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<sup>36</sup> Starbucks highlights the number of employees who repeatedly worked at other locations over the approximately two-year period. Even focusing on the percent of employees who worked at “four or more” stores during the two-year period, the number of shifts worked elsewhere still averages out to a handful of shifts annually.

<sup>37</sup> Compare *Cargill, Inc.*, 336 NLRB at 1114 and *Britain Transp.*, 330 NLRB at 398 with *Purolator Courier Corp.*, 265 NLRB 659, 661 (1982) (interchange factor satisfied where 50 percent of the work force worked at other facilities each day and were frequently supervised by managers at other terminals) and *Dayton Transp. Corp.*, 270 NLRB 1114 (1984) (presumption rebutted with 400 to 425 temporary employee interchanges between terminals among a workforce of 87 and the temporary employees were directly supervised by the terminal manager from the point of dispatch).

<sup>38</sup> I have carefully considered the cases Starbucks relies upon for support that this factor weighs in favor of a multi-facility unit and find them distinguishable. See, e.g., *Budget Rent A Car Sys.*, 337 NLRB at 884-85 (regular daily contact between employees regarding shared fleet of rental cars and lack of local autonomy of branch managers); *McDonald's*, 192 NLRB 878, 878 (1971) (transfers involuntary); *Twenty-First Century Rest. of Nostrand Ave. Corp.*, 192 NLRB 881, 882 (1971) (involuntary transfers and daily visits by upper-level management).

some are less than 5 miles from at least one other location. The three petitioned-for stores range from about 7 miles to about 14 miles apart. The Board has regularly found a multi-facility unit inappropriate in cases involving closer or similar proximities.<sup>39</sup>

### *Bargaining History*

That Starbucks lacks a bargaining history for any store in the Buffalo market is at best a neutral factor. If anything, it lends some support to single-facility units. *Lipman's*, 227 NLRB 1436, 1438 (1977) (in finding single store units in retail chain appropriate, emphasizing “the fact that there is no bargaining history for any of these employees, and the fact that no labor organization seeks to represent the employees on a broader basis”).

### **Conclusion**

In light of local autonomy over daily operational and labor matters, the differences in function and workplace conditions of employees, limited and largely voluntary interchange, relative distance between the locations, and lack of bargaining history, I find that Starbucks has failed to sustain its burden to overcome the single-facility presumption.

Therefore, consistent with the precedent set forth herein, the petitioned-for units are appropriate for bargaining. It is hereby ordered that the Walden & Anderson store (Case 03-RC-285929) proceed to an election in the following unit:

**Including:** All full-time and regular part-time Baristas and Shift Supervisors employed by the Employer at its store located at 1775 Walden Avenue, Cheektowaga, NY 14225.

**Excluding:** Office clerical employees, guards, professional employees and supervisors as defined in the Act.

It is further ordered that the Sheridan & North Bailey store (Case 03-RC-285986) proceed to an election in the following unit:

**Including:** All full-time and regular part-time Baristas and Shift Supervisors employed by the Employer at its store located at 3186 Sheridan Drive, Amherst, NY 14226.

**Excluding:** Office clerical employees, guards, professional employees and supervisors as defined in the Act.

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<sup>39</sup> *New Britain Transp.*, 330 NLRB at 398 (“[G]eographic separation [of 6 to 12 miles], while not determinative, gains significance where, as here, there are other persuasive factors supporting the single-facility unit); *Red Lobster*, 300 NLRB at 908, 912 (finding stores with an average distance of 7 miles apart and all within a 22-mile radius appropriate single-facility units); *Lipman's*, 227 NLRB at fn.7 (finding stores located only 2 miles apart appropriate single-facility units).

It is further ordered that the Transit & French store (Case 03-RC-285989) proceed to an election in the following unit:

Including: All full-time and regular part-time Baristas and Shift Supervisors employed by the Employer at its store located 4770 Transit Road, Depew, New York 14043.

Excluding: Office clerical employees, guards, professional employees and supervisors as defined in the Act.

### **Method of Elections**

The parties disagree as to whether the three elections at issue should be conducted manually or by mail. The Employer requests manual elections on the basis that they are generally preferable. It further urges the Region to analyze the need for mail ballot elections under *San Diego Gas & Electric*, 325 NLRB 1143 (1998), rather than under the standard articulated in *Aspirus Keweenaw*, 370 NLRB No. 45 (Nov. 9, 2020) which considers pandemic circumstances. The Union requests mail ballot elections. Both parties agree on the need for neutral locations should the Region order manual elections.

The mechanics of an election, such as date, time, and place, are left to the discretion of the Regional Director. *Ceva Log. U.S., Inc.*, 357 NLRB 628 (2011); *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1366 (1954). In addition, the Board has found that Regional Directors have the discretion to determine whether an election will be conducted manually or by mail ballot. *See Nouveau Elevator Indus., Inc.*, 326 NLRB 470, 471 (1998); NLRB Casehandling Manual (Part Two), Representation Proceedings, Section 11228 and Section 11301.2 (the determination over the method of election is not an issue subject to litigation).

Although the Board generally favors manual elections, it has a long history of conducting mail ballot when necessary. *London's Farm Dairy, Inc.*, 323 NLRB 1057, 1058 (1997) ("From the earliest days of the Act, the Board has permitted eligible votes in appropriate circumstances to cast their ballots by mail."). Thus, there are well-established procedures for conducting effective mail ballot elections set forth in the Board's Casehandling Manual (Part Two), Representation Proceedings, at Section 11336, et seq.

Independent of the pandemic factors articulated in *Aspirus Keweenaw*, I find that mail ballot elections are appropriate here. In *San Diego Gas*, the Board stated that a mail-ballot election may be appropriate:

[W]here eligible voters are "scattered" because of their job duties over a wide geographic area; (2) where eligible voters are "scattered" in the sense that their

work schedules vary significantly, so that they are not present at a common location at common times; and (3) where there is a strike, a lockout or picketing in progress. If any of the foregoing situations exist, the Regional Director, in the exercise of discretion, should also consider the desires of all the parties, the likely ability of voters to read and understand mail ballots, the availability of addresses for employees, and finally, what constitutes the efficient use of Board resources, because efficient and economic use of Board agents is reasonably a concern.

The second circumstance identified in *San Diego Gas* applies to these elections.

Starbucks' employees at the three stores in question work shifts on different days and times which may vary week to week. Moreover, many, but not all, work part-time schedules. The Board held in *San Diego Gas* that eligible voters are "scattered" under such circumstances. 325 NLRB at fn.7 ("[E]mployees may be deemed to be 'scattered' where they . . . work different shifts, or work combinations of full-time and part-time schedules."). Here, the combination of shift work and the high frequency of part-time schedules means that eligible voters are unlikely to be scheduled to work at a common time on a common day. Even setting an additional date and time for voting in each election may not coincide with all employees' variable and changeable part-time schedules. *Id.* ("The 'scattered' criteria are intended to apply in any situation where all employees cannot be present at the same place at the same time.") (citing *London's Farm Dairy*, 323 NLRB at 157; *Reynolds Wheels Int'l*, 323 NLRB No. 187 (June 20, 1997)). Mail ballot elections are therefore the best method to ensure ready voting access for all employees consistent with Section 7 of the Act.

Other considerations also support this conclusion. The record reflects that many eligible voters do not have cars which may make it difficult to reach an off-site neutral location if one is not available within walking distance of the employee's home store. The Union favors a mail-ballot election, no reason exists to doubt that the employees would be unable to read or understand the mail ballots, and eligible voters' addresses should be readily available. *Id.* at 1145. Additionally, though not the basis for the decision to order mail-ballot elections, manual elections would burden the Board's resources because three separate elections would need to be conducted at multiple off-site locations over a period of several days to accommodate the various work schedules of the part-time employees. *Id.* (noting that "efficient and economic use of Board agents is reasonably a concern").

Accordingly, I find that mail ballot elections are appropriate.

## **DIRECTION OF ELECTIONS**

Elections by secret ballot will be conducted by the undersigned among the employees in the units found appropriate in this Decision on the dates, times, places and manner set forth in the Notices of Election which will issue subsequent to this Decision. Employees will vote on whether they wish to be represented for purposes of collective bargaining by Workers United.

### **A. Elections Details**

The elections will be conducted by mail ballot. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining units. At **5:00 p.m. on January 31, 2022**, ballots will be mailed to voters by National Labor Relations Board, Region 3 Office. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 3 office by close of business on **February 22, 2022**.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **February 10, 2022** should communicate immediately with the National Labor Relations Board by either calling the Region 3 Office at (716) 551-4931 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

Due to the extraordinary circumstances of COVID-19 and the directions of state or local authorities including but not limited to Shelter in Place orders, travel restrictions, social distancing and limits on the size of gatherings of individuals, I further direct that the ballot counts will take place virtually, on a platform (such as Zoom, Skype, WebEx, etc.) starting at **1:00 p.m. on February 23, 2022**. Each party will be allowed to have an observer attend the virtual ballot count.

### **B. Voting Eligibility**

Eligible to vote are those in the units who were employed during the payroll period ending **January 9, 2022**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the elections date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the elections date; and

(3) employees who are engaged in an economic strike that began more than 12 months before the elections date and who have been permanently replaced.

### **C. Voter Lists**

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Acting Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters for each voting unit. **The Employer must provide a separate voting list for each voting unit.**

The Petitioner waived the full ten days to receive the list. To be timely filed and served, the list must be *received* by the Acting Regional Director and the parties by **January 19, 2022**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the lists must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because each list will be used during the elections, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for each list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, each list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The lists may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election(s) whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve each list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter lists for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.



#### **D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election forthcoming in conspicuous places, including all places where notices to employees in the units found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the units found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the elections and copies must remain posted until the end of the elections. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

#### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request(s) for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Acting Regional Director. Accordingly, a party is not precluded from filing a request(s) for review of this decision after the elections on the grounds that it did not file a request for review of this Decision prior to the elections. The request(s) for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations. The request(s) for review must further identify by case number(s) which decision(s) directing election the party is asking the Board to review.

A request(s) for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request(s) for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number(s), and follow the detailed instructions. If not E-Filed, the request(s) for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request(s) for review must serve a copy of the request(s) on the other parties and file a copy with the Acting Regional Director. A certificate(s) of service must be filed with the Board together with the request(s) for review.

Neither the filing of a request(s) for review nor the Board's granting a request(s) for review will stay the election(s) in this matter unless specifically ordered by the Board. If a request(s) for review of a pre-election decision and direction of elections is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request(s) and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request(s) for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: January 14, 2022.

**/s/ Nancy Wilson**

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